IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1551 OF 2006

Indian Octroi Corporation ...Appellant
Vs.
B.M.C. ...Respondent

Mrs Nilima Sanglikar for the Appellant.
Shri J.J. Xavier for the Respondent.

CORAM : A. S. OKA, J.
DATE : AUGUST 08, 2006.

P.C.:

1. Admit. The Respondent waives service. Taken up for hearing forthwith.

2. The Appeal is by the original Plaintiff. The suit is filed by the original Plaintiff for challenging notice dated 22nd December, 2001 issued under section 351 of the Bombay Municipal Corporation Act, 1888. The Respondent-Corporation did not file written statement. The written statement was filed in the companion suit No.3518 of 1996 which was tried alongwith the present suit No.6713 of 2001 filed by the Appellant. The suit filed by the Appellant has been dismissed by the impugned Judgment and Decree.

3. The learned Advocate appearing for the

Appellant submitted that due to failure of the Respondent-Corporation to file written statement, the suit should have been decreed. During the course of submissions, Shri Xavier appearing for the Respondent stated that written statement of the Respondent-Corporation was kept ready on 08th February, 2006 but the same could not be filed before the suit was decided on 07th April, 2006. He submitted that the Respondent may be given a chance to file the written statement as the specific case of the Respondent is that the suit structure was earlier demolished and was reconstructed by the Appellant-Plaintiff.

3. It appears that the written statement of the Respondent-Corporation was infact kept ready. There are various issues raised in the suit including the issue as regards applicability of the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971. The other issue to be decided is whether the suit structure was earlier demolished by the Respondent-Corporation. This issue of demolition was not involved in the other companion suit. However, it appears that in the present suit

the Respondent-Corporation adopted the written statement in the companion suit. Considering the controversy involved in the suit, I am of the view that opportunity deserves to be granted to the Respondent-Corporation to file the written statement by remanding the suit to the Trial Court. The suit can be directed to be disposed of in a time bound frame by the Trial Court.

4. Hence, I pass the following order:

(i) The impugned judgment and decree dated 07th April, 2006 passed in L.C. Suit No.6713 of 2001 is quashed and set aside and the suit is restored to the file.

(ii) The parties are directed to appear before the learned Trial Judge on 05th September, 2006 at 11.00 a.m. The Respondent- Corporation to file written statement within period of one week from 05th September, 2006. No further time will be granted to the Respondent to file the written statement.

(iii) After the written statement is filed, the learned Judge will be at liberty to recast the issues. The Appellant will be entitled to lead further evidence in addition to evidence which is already on record. The Respondent will be entitled to recall the witnesses of the Appellant who are already examined for further cross-examination and the Respondent will be free to lead further evidence.

(iv) The learned Trial Judge will decide the suit afresh as expeditiously as possible and preferably on or before 30th March, 2007. Till the disposal of the suit both the parties will maintain status-quo as of today in all respects of the suit structures.

(v) Parties and concerned courts to act upon an authenticated copy of this order.

(vi) The office is directed to send the writ of this order forthwith by hand.

JUDGE